UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Offic
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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/403,075	05/10/00	JOHNSON G	CPI-042CPUS

HM12/0928

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EXAMINER	
HUNT, J	
ART UNIT	PAPER NUMBER
1642	6

DATE MAILED: 09/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/403,075	Applicant(s) JOHNSON, GARY L.	
	Examiner Jennifer E Hunt	Art Unit 1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-67 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 1-67 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, 12, 16, 19, 20, and 43-62, drawn to nucleic acid molecules, corresponding vectors, host cells, method of making such and a method of using such.

Group II, claim(s) 9-10, 13-14, and 26-42, drawn to a polypeptide.

Group III, claim(s) 11 and 15, drawn to an antibody.

Group IV, claim(s) 17 and 18, drawn to a method of detecting a polypeptide.

Group V, claim(s) 21, drawn to a method of detecting the presence of a biological activity of a MEKK1 polypeptide.

Group VI, claim(s) 22-24, drawn to a method of modulating MEKK1 activity.

Group VII, claim(s) 25, drawn to a method of identifying a genetic alteration.

Group VIII, claim(s) 63 and 64, drawn to a method of altering apoptosis.

Group IX, claim(s) 65, drawn to a method of generating an MEKK1 active fragment.

Group X, claim(s) 66-67, drawn to a method of identifying a compound which modulates the apoptotic activity of an MAKK1 active fragment.

The inventions listed as Groups I-X do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

An international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
(1) a product and process specially adapted for the manufacture of said product; or
(2) a product and a process of use of said product; or
(3) a product, a process specially adapted for the manufacture of said product, and a process of use of said product; or
(4) a process and an apparatus or means specifically designed for carrying out the process; or
(5) a product, a process specially adapted for the manufacture of said product, and an apparatus or means specifically designed for carrying out the process.

In the instant case, Group I contains a product (a MEKK1 nucleic acid molecule and corresponding vectors and host cells), and a process of use of the product (a method for detecting a MEKK1 nucleic acid molecule). The products and methods of Groups II-X are distinct from the methods of Group I for the reasons set forth below:

Group II is drawn to a polypeptide product. Group III is drawn to an antibody product. The products of Groups I-II are distinct because the nucleic acid molecule of Group I, the polypeptide of Group II and the antibody of Group III have completely different structures, physical properties, and physiological functions.

Group IV is drawn to a method of detecting a polypeptide. Group V is drawn to a method of detecting the presence of a biological activity of a MEKK1 polypeptide. Group VI is drawn to a method of modulating MEKK1 activity. Group VII is drawn to a method of identifying a genetic alteration. Group VIII is drawn to a method of altering apoptosis. Group IX is drawn to a method of generating an MEKK1 active fragment. Group X is drawn to a method of identifying a compound which modulates the apoptotic activity of an MEKK1 active fragment. These are distinct methods, having different starting points, distinct method steps, and different outcomes.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

If any of Groups I-X are elected, applicant must further elect an MEKK1 homolog:

A) Human

B) Rat

C) Mouse

These are distinct polynucelotides and polypeptides, and methods of making and using such.

If Group VI is elected, applicant must further elect a modulating agent:

D) Antibody

E) Nucleic Acid Molecule

These are distinct structures having different effects in the methods which are being carried out.

If Group VIII is elected, applicant must further elect an alteration of apoptosis:

F) Apoptosis is stimulated

G) Apoptosis is inhibited

These are distinct activities, stimulated by different agents and having opposite outcomes.

If Group X is elected, applicant must further elect an activity which is modulated:

H) Apoptosis is modulated

I) Proteolytic clevage is modulated

These are distinct activities, stimulated by different agents and having opposite outcomes.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the reasons detailed above.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E Hunt whose telephone number is (703) 308-7548. The examiner can normally be reached on Monday-Friday, 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa can be reached on (703) 308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0196.

ANTHONY C. CAPUTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Jennifer E Hunt
Examiner
Art Unit 1642

jeh
September 26, 2001